IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 25859 of 2003

Between:

1 C.S.I Primary (Aided) School, rep by its Correspondent S. Baldwin Raju Chittoor, Chittoor District.
2 Giri Rao Theosophical (Aided) School, Rep by its Correspondent J. Jeevan Kumar, Madanapally, Chittoor District.
3 Giffer Memorial (Aided) High School rep by its Correspndent P.Alfred Deva Prasad. Renigunta, Chittoor District.
4 B.Z. (Aided) High School, Rep by its Correspondent M.B. Subba Ramappa Nayanim Varu.
5 Little Flower English Medium (Aided) School Chittoor, rep by its Correspondent Smt. A. Gnana Mary Chittoor District.
6 R.C. M UP School (Aided), rep by its Correspondent Smt. A. Gnana Mary Renigunta, Chittoor District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh rep by its Secretary, Education (PS) Department, Secretariat,
Hyderabad.
2 The Commissioner and Director of School Hyderabad,
Education Govt of Andhra Pradesh, Saifabad,
Hyderabad.
3 the Educational Officer Collectorate Complex, Chittoor,
Chittoor District.
4 The District Collector, Chittoor,
Collectorate Complex, Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction or particularly one in the nature of Writ of Mandmaus, declaring the action of the 4th respondent in issuing the impugned proceedings in

Rc. No. 1057/B2/2000 dt 25-11-2003 without any authority of law and jurisdiction and further action of appointing the officers not belongs to Education Department as his nominess to participate in the selection process for filling of the aided vacancies of Teacher posts in the petitioners school, as illegal, in violation of A.P. Education Act and G.O.Ms. No. 1 dt 01-01-1994 and consequently set a side the impugned proceedings of the 4th respondent with a direction to 3rd respondent to complete the selection process as per G.O.ms. No.1 dt 1-1-1994.

Counsel for the Petitioners:MR.K.RATHANGA PANI REDDY

Counsel for the Respondents : MR.VENKATESWARLU POSANI

GP FOR SCHOOL EDUCATION FOR R1 TO 4

The Court made the following :

-

ORDER

This Writ Petition is filed seeking a Mandamus declaring the action of the fourth respondent in issuing the proceedings in Rc.No.1057/B2/2000, dated 25.11.2003 and the action of appointing the officers not belonging to Education Department as his nominees to participate in the selection process for filling of the aided vacancies of Teacher Posts in the petitioners' schools, as illegal and in violation of A.P. Education Act and G.O.Ms.No.1, dated 1.1.1994.

The case of the petitioners is that their respective schools are aided schools and in pursuance of the memo issued by the third respondent in Rc.No.1057/B2/2003, dated 1.6.2003, they submitted the proposals to the third respondent for filling up the vacancies in their respective schools. The third respondent, after calling for the remarks and after satisfying, accorded permission to the petitioners schools in the

months of June and July, 2003 by appointing the concerned Deputy Educational Officer as his nominee to preside over the Staff Selection Committee for filling up the aided posts. However, the third respondent without fixing the date for selections by sending his nominees, has kept the selection in abeyance by addressing letters to the concerned Deputy Educational Officers. Thereafter, the fourth respondent issued the impugned proceedings appointing the officers from Social Welfare, D.R.D.A. Project, S.C. Corporation etc., as his nominees to conduct the recruitment process in the schools of the petitioners. The selection process in the petitioners schools is governed by A.P. Education Act, 1992 and the Rules made under the A.P. Educational Institutions (Establishments, Recognition, Administration and control of Schools under Private Managements) Rules, 1994, issued in G.O.Ms.No.1, Education (P.S.2), dated 1.1.1994. As per Rule 13 (e) of the said Rules it is only the third respondent, who has to appoint an officer not below the rank of Deputy Educational Officer as his nominee to participate in the selection committee. The fourth respondent has no jurisdiction and has no right to interfere in the affairs of the educational agencies and to appoint his nominees from other department, who are no way connected with the Educational Department.

The third respondent filed counter affidavit denying the allegations made by the petitioners. It is admitted that the fourth respondent has nominated the District Officers of other than the Education Department in the selection committee as nominee of the District Education Officer. It is stated that the third respondent has accorded permission to the petitioners to conduct recruitment to the vacancies in their institutions duly following the procedure prescribed in G.O.Ms.No.1, Edn, dated 1.1.1994 and he has also nominated the concerned Deputy Educational Officers in the Selection Committee to act as the representative of the District Educational Officer in conducting the recruitment process. Subsequently, on the instructions of the fourth respondent in the telegram, dated 5.9.2003 the third respondent has kept the order in abeyance. It is stated that on the direction of the fourth respondent, District Officers other than Education Department were nominated to act as the nominee in the Selection Committee in place of the concerned Deputy Educational Officers.

Learned counsel for the petitioners contended that the fourth respondent-District Collector has no power to nominate the officers of his own choice in the recruitment process and it is the District Educational Officer, who is alone competent to

nominate as per Rule 12 of Establishment of Schools (Private including Minority) Rules, (for short 'the Rules') which is also prescribed in G.O.Ms.No.1, Education, dated 1.1.1994 and hence he sought to set aside the impugned order.

On the other hand, the learned Government Pleader for School Education contended that under Rule 12 (2A) of the Rules before filling up the vacancies the clearance from the District Level Surplus Man Power Cell has to be obtained and since the Surplus Man Power Cell is under the control of fourth respondent-District Collector, he has power to nominate the persons of his choice for the Selection Committee and hence, she pleads to dismiss the writ petition.

The factual matrix is not in dispute. The petitioners schools submitted proposals for filling up of certain vacancies as per the guidelines. All the petitioners schools are aided schools. When they submitted proposals to the third respondent for filling up the vacancies in the month of June and July, 2003, the District Educational Officer appointed his nominee over the Staff Selection Committee for filling up the posts by virtue of his proceedings, dated 13.6.2003, 21.7.2003, 25.7.2003, 18.6.2003, 23.7.2003 and 25.6.2003. In the meanwhile, the fourth respondent-District Collector by the impugned proceedings appointed his own nominees over the Selection Committee of the petitioners schools.

As per Rule 12(5) of the Rules, Aided Schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O.'s nominee a reasonable opportunity of being present. A selection, however, shall not be vitiated only on the ground of the absence of D.E.O.'s nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

From the above rule, it is clear that it is the District Educational Officer to nominate the Deputy Educational Officer or any other officer in the selection process. But, however, the learned Government Pleader placed reliance on Rule 12 (2A)(i) of the Rules, which reads as follows:

> "12 (2A) (i)- Before filling up of the aided teaching posts, the recruiting agency shall necessarily obtain clearance from the District Level Surplus Man Power Cell under the control of the District Collector. If there are suitable candidates in

the Surplus Man Power Cell of the District they shall be absorbed against the said vacancies as per the subject requirements. If there are no suitable candidates available as per the subject requirement, further action to fill up the vacancies may be taken by the recruiting agencies and competent authorities as per these rules without any further clearance from the Government in Finance Department subject to fulfillment of all the provisions of the said Rule."

But, Rule 12 (2A) (i) has no application to the facts of the case on hand because the said Rule applicable only when before filling up the posts necessary permission has to be obtained from the District Level Surplus Man Power Cell, which is under the control of the District Collector. None of the Rules in G.O.Ms.No.1, Education, dated 1.1.1994 gives power to the District Collector to nominate a person to participate in the selection process. As per these Rules, the District Educational Officer alone is competent to nominate the Deputy Educational Officer or any other officer.

When an order is passed without any jurisdiction or without any source of power under the Rules, it can be said such an order is illegal. In the absence of any Rule or any Government instructions to enable the fourth respondent-District Collector to nominate the persons of his own choice in the selection process, the impugned proceedings suffers from serious infirmities and lacks jurisdiction.

Under those circumstances, the writ petition is allowed and the impugned orders are quashed. The third respondent shall take necessary steps as per Rule 12(5) of the Establishment of Schools (Private including Minority) Rules, within one month from the date of receipt of a copy of this order. No order as to costs.

_____

K.C.BHANU, J

19th JULY, 2005

Tsr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Acting Chief Justice Bilal Nazki on this Tuesday the Nineteenth

of Two thousand and five.

Assistant Registrar.

To

1 The Secretary, Education (PS) Department, Government of Andhra Pradesh Secretariat, Hyderabad.
2 The Commissioner and Director of School Education,

Govt of Andhra Pradesh, Saifabad, Hyderabad.
3 The Educational Officer, Collectorate Complex, Chittoor, Chittoor District.
4 The District Collector, Chittoor, Collectorate Complex, Chittoor District.

5. Two C.Cs. to G.P. for School Education, High Court Buildings,

Hyderabad (OUT)

6. Two C.D. copies.